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NO.

In The Supreme Court of the United States

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Maycol Jesús Romero-Rodriguez,
*and*
Cesar Eliu Romero-Rodriguez,
*Petitioners,*

*v.*

Attorney General of the United States,
*Respondent.*

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On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Eleventh Circuit

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# PETITION FOR WRIT OF CERTIORARI

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Maycol Jesús Romero-Rodriguez
and
Cesar Eliu Romero-Rodriguez, *pro se*
999 Ponce De Leon Blvd.
Suite 940
Coral Gables, FL 33134
Tel: (305) 446-8686
Fax: (305) 529-0445

The immigration judge found "there is no basis on which [he could] grant asylum." Immigration Judge's Decision, AR 156. [1]

However, the petitioners were entitled to withholding of removal due to their being members of a particular social group. The immigration judge therefore could have granted petitioners asylum based upon the petitioners' membership in the previously mentioned particular social group, however, failed to do so.

## Questions Presented

Were the petitioner's procedural due process rights violated when the immigration judge refused to grant the petitioners withholding of removal, the Board summarily affirmed the immigration judge's adverse decision, moreover, when the Eleventh Circuit Court of Appeals dismissed the petition for review of the underlying administrative orders?

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[1] Brief Statement in Support of Question Presented.

## Parties to the Proceedings

Petitioners are Cesar Eliu Romero-Rodriguez and Maycol Jesus Romero-Rodriguez. The Respondent is Alberto J. Gonzales, Attorney General of the United States.

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The undersigned counsel, on behalf of Cesar Eliu Romero-Rodriguez and Maycol Jesus Romero-Rodriguez, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

## Opinions Below

The Eleventh Circuit Court of Appeal's order denying the petitioner's petition for review in *Romero-Rodriguez, et al. v. U.S. Attorney General*, Case No. 04-13230 (11th Cir. May 19, 2005) is unpublished and is attached to the instant brief as Appendix I. (cont. next page)

The Executive Office of Immigration Review, Board of Immigration Appeal's, June 1, 2004 administrative decisions in In Re: Romero-Rodriguez, et al., (A79-044-246 & A79-044-247) (BIA June 1, 2004) is attached as Appendix II.

The Office of the Immigration Judge, Executive Office of Immigration Review's, September 16, 2003, administrative orders of removal entered in Matter of Romero-Rodriguez, et al., (A79-044-246 & A79-044-247) (EOIR September 16, 2003 June 1, 2004) is attached as Appendix III.

**Jurisdiction**

The instant case arises from a petition for review in the Eleventh Circuit Court of Appeals from final administrative orders of the Board of Immigration Appeals ("Board) that affirmed the immigration judge's denial of the petitioners' asylum application and inclusive orders subjecting the petitioners to removal from the United States.

The Eleventh Circuit Court of Appeals' judgment denying the Petitioner's petition for review was entered on May 10, 2005. The instant petition for writ of certiorari is therefore timely filed within 90 days of the judgment entered by the Court of Appeals. Supreme Court Rule 13.

**WHEREFORE**, this Honorable Court possesses jurisdiction to consider and determine the instant petition for writ of certiorari pursuant to 28 U.S.C. §1254(1).

## Constitutional and Statutory Provisions Involved

The Due Process Clause of the Fifth Amendment of the Constitution of the United States provides:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law."

8 U.S.C. §1158(b)(1) provides:

> The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

8 U.S.C. §1101(a)(42) provides:

> (42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation

(as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

8 U.S.C. §1231(b)(3)(A) provides:

> Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

Pub. L. 105-277, div. G, subdiv. B, title XXII, Sec. 2242, Oct. 21, 1998, 112 Stat. 2681-822, provides:

> (a) Policy.-- It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.